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 RICHARD W. WIEKING
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 NORTHERN DISTRICT OF CALIFORNIA
*Full Body iss.
 ADR (5)*

10
 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13
 14

15 AL DE LA CAMPA,

CASE NO.
Civil Rights

C13-2184

16 Plaintiff,
 17
 v.
 18

19 COMPLAINT FOR PRELIMINARY AND
 20 PERMANENT INJUNCTIVE RELIEF AND
 21 DAMAGES: DENIAL OF CIVIL RIGHTS
 22 AND ACCESS TO PUBLIC FACILITIES TO
 23 PHYSICALLY DISABLED PERSONS, PER
 CALIFORNIA STATUTES (INCLUDING
 CIVIL CODE §§ 51, 52, 54, 54.1, and 54.3;
 BUSINESS & PROFESSIONS CODE
 §§ 17200 *et seq.*; and HEALTH & SAFETY
 CODE §§ 19955 *et seq.*); INJUNCTIVE
 RELIEF PER TITLE III, AMERICANS
 WITH DISABILITIES ACT OF 1990

Defendants.

/ DEMAND FOR JURY TRIAL

24 Plaintiff AL DE LA CAMPA complains of Defendants BENIHANA,
 25 INC.; BENIHANA NATIONAL CORPORATION; EQUITY ONE, INC.;
 26 ANGELO, GORDON & CO., L.P.; and DOES 1-20, inclusive, and each of them,
 27 and alleges as follows:

28 1. **INTRODUCTION:** This case involves the denial of accessible
 restaurant facilities, including denial of accessible entrances, seating, exterior and
 interior paths of travel, parking facilities and restrooms to plaintiff AL DE LA
 CAMPA and other disabled persons at the Benihana restaurant, located at 1989
 Diamond Blvd, Concord, California. Plaintiff AL DE LA CAMPA is a "person

1 with a disability" or "physically handicapped person." Plaintiff is disabled by
 2 knee injuries and multiple knee surgeries, often requires the use of a wheelchair
 3 and/or crutches for ambulation, and finds it difficult to use portions of public
 4 facilities which are not accessible to mobility disabled persons including those
 5 who require the use of a wheelchair. During visits to the Benihana restaurant on
 6 or about November 2, 2012, November 10, 2012, and January 23, 2013, plaintiff
 7 was denied his rights to full and equal access at these facilities, and was denied
 8 his civil rights under both California law and federal law, as hereinbelow
 9 described, because these facilities were not, and are not now, properly accessible
 10 to physically disabled persons, including those who use wheelchairs or other
 11 mobility assistive devices. Despite plaintiff's complaints to management at the
 12 time of his first specified visit, no improvements to access appear to have been
 13 made. Plaintiff seeks injunctive relief to require defendants to make these
 14 facilities accessible to disabled persons and to ensure that any disabled person
 15 who attempts to use the facilities will be provided accessible and usable facilities.
 16 Plaintiff also seeks recovery of damages for his discriminatory experiences,
 17 denials of access and denials of his civil rights, which denials are continuing as a
 18 result of defendants' failure to provide disabled accessible facilities. Plaintiff also
 19 seeks recovery of reasonable attorney fees, litigation expenses and costs,
 20 according to statute.

21 **2. JURISDICTION:** This Court has jurisdiction of this action
 22 pursuant to 28 USC § 1331 for violations of the Americans with Disabilities Act
 23 of 1990, 42 USC §§ 12101 *et seq.* Pursuant to pendant jurisdiction, attendant and
 24 related causes of action arising from the same facts are also brought under
 25 California law, including but not limited to violations of California Government
 26 Code § 4450 *et seq.*; Health & Safety Code §§ 19955-19959; California Civil
 27 Code §§ 51, 52, 54, 54.1, and 54.3; California Business & Professions Code
 28 §§ 17200 *et seq.*; and Title 24 California Code of Regulations.

1 3. **VENUE:** Venue is proper in this court pursuant to 28 USC
 2 § 1391(b) and is founded on the fact that the real property which is the subject of
 3 this action is located in this district and that plaintiff's causes of action arose in
 4 this district.

5 4. **PARTIES:** Plaintiff is a qualified physically disabled person who
 6 has difficulty walking due to his disabilities and who has often required use of a
 7 wheelchair or crutches for locomotion. He is awaiting further knee surgery in the
 8 next six months and expects to require use of a wheelchair for an unknown period
 9 of time after such surgery. He has been issued a "disabled" parking placard by
 10 the State of California. Defendants BENIHANA, INC.; BENIHANA
 11 NATIONAL CORPORATION; EQUITY ONE, INC.; ANGELO, GORDON &
 12 CO., L.P.; and DOES 1-20, inclusive, are the owners, operators, lessors, and
 13 lessees of the business, property, building and/or portions thereof located at 1989
 14 Diamond Blvd, Concord, California. This restaurant, Benihana (hereinafter also
 15 "Restaurant"), is a "public accommodation and business establishment" subject to
 16 the requirements of California Health & Safety Code § 19955 *et seq.* and of
 17 California Civil Code §§ 54 *et seq.* On information and belief, such facilities
 18 have, since July 1, 1970, undergone construction and/or "alterations, structural
 19 repairs, or additions" subjecting such building and its parking areas to disabled
 20 access requirements per Health & Safety Code §§ 19955-19959 *et seq.* On
 21 information and belief, alterations since July 1, 1982 have also subjected the
 22 building and parking lot to disabled access requirements of California's Title 24,
 23 the State Building Code. Further, irrespective of the alteration history, such
 24 premises are subject to the "readily achievable" barrier removal requirements of
 25 Title III of the Americans With Disabilities Act of 1990.

26 5. The true names and capacities of defendants Does 1 through 20,
 27 inclusive, are unknown to plaintiff who therefore sues said defendants by such
 28 fictitious names. Plaintiff is informed and believes that each of the defendants

1 herein designated as a Doe is legally responsible in some manner for the events
 2 and happenings herein referred to and caused injury and damages proximately
 3 thereby to plaintiff; plaintiff prays leave of Court to amend this Complaint to
 4 show such true names and capacities when the same have been ascertained.

5 6. Defendants BENIHANA, INC.; BENIHANA NATIONAL
 6 CORPORATION; EQUITY ONE, INC.; ANGELO, GORDON & CO., L.P.; and
 7 DOES 1-20, inclusive, are and were the owners, operators, lessors and/or lessees
 8 of the subject business, property and/or building at all times relevant to this
 9 Complaint. Plaintiff is informed and believes that each of the defendants herein is
 10 the agent, employee or representative of each of the other defendants, and
 11 performed all acts and omissions stated herein within the scope of such agency or
 12 employment or representative capacity and is responsible in some manner for the
 13 acts and omissions of the other defendants in proximately causing the damages
 14 complained of herein.

15
 16 **FIRST CAUSE OF ACTION: DAMAGES AND INJUNCTIVE RELIEF
 17 FOR DENIAL OF FULL AND EQUAL ACCESS TO PUBLIC FACILITIES
 18 IN A PUBLIC ACCOMMODATION**

(California Health & Safety Code §§ 19955 *et seq.*, California Civil Code
 §§ 54 and 54.3, California Business & Professions Code §§ 17200 *et seq.*)

19 7. Plaintiff repleads and incorporates by reference, as if fully set forth
 20 again herein, the factual allegations contained in Paragraphs 1 through 6, above,
 21 and incorporates them herein by reference as if separately replied hereafter.

22 8. Plaintiff AL DE LA CAMPA and other similarly situated physically
 23 disabled persons who are mobility disabled, including but not limited to those
 24 who require the use of a wheelchair, crutches, cane or other assistive device, are
 25 unable to use public facilities on a "full and equal" basis unless each such facility
 26 is in compliance with the provisions of California Health & Safety Code
 27 §§ 19955 *et seq.* Plaintiff is a member of that portion of the public whose rights
 28 are protected by the provisions of Health & Safety Code §§ 19955 *et seq.*

1 9. Health & Safety Code §§ 19955 and 19955.5 were enacted “[t]o
 2 ensure that public accommodations or facilities constructed in this state with
 3 private funds adhere to the provisions of Chapter 7 (commencing with Section
 4 4450) of Division 5 of Title 1 of the Government Code.” On information and
 5 belief, the provisions of both Health and Safety Code §§ 19955 and 19955.5,
 6 apply to the Restaurant, business, building, parking lot and premises located at
 7 1989 Diamond Blvd, Concord, California. The code relating to such public
 8 accommodations also requires that “When sanitary facilities are made available
 9 for the public, clients, or employees . . . , they shall be made available for persons
 10 with disabilities.” Title 24, California Code of Regulations, formerly known as
 11 the California Administrative Code, was in effect at the time of each alteration
 12 which, on information and belief, occurred at such public facility since July 1,
 13 1982, thus requiring access complying with the specifications of Title 24
 14 whenever each such “alteration, structural repair or addition” was carried out. On
 15 information and belief, defendants and/or their predecessors in interest carried out
 16 alterations, structural repairs, or additions to the building during the period Title
 17 24 has been in effect. On information and belief, alterations, structural repairs, or
 18 additions which triggered access requirements also occurred between July 1, 1970
 19 and July 1, 1982, and required access pursuant to the A.S.A. (American Standards
 20 Association) Regulations then in effect, pursuant to the incorporated provisions of
 21 California Government Code §§ 4450 *et seq.* and California Health & Safety
 22 Code § 19959.

23 10. **FACTUAL STATEMENT:** On or about November 2, 2012,
 24 plaintiff AL DE LA CAMPA went to the Benihana restaurant, 1989 Diamond
 25 Blvd., in the Willows Shopping Center, Concord, to have a meal with his wife.
 26 Plaintiff was using his wheelchair due to his inability to walk as a result of knee
 27 surgery. On information and belief, there were no properly configured and
 28 signed disabled parking spaces available for patrons of the Restaurant, and the

1 parking lot signage and exterior paths of travel did not comply with Title 24 and
 2 ADAAG requirements. When plaintiff approached the entrance to the Restaurant
 3 in his wheelchair he found it difficult and uncomfortable to follow the path of
 4 travel to the entrance due to a rock studded and uneven walkway surface. At the
 5 Restaurant's entrance he was unable to open the exterior entry double doors due
 6 to their excessive weight, and, to his embarrassment, required the assistance of
 7 others to enter. Once inside the exterior doors he encountered another set of
 8 heavy, double glass doors, again was unable to open the doors due to their
 9 excessive weight, and again required assistance to enter. Plaintiff complained
 10 about the entry doors to several Restaurant management employees prior to his
 11 being seated. Plaintiff also complained to Restaurant management about the lack
 12 of proper wheelchair seating and paths of travel around and between the tables,
 13 which caused him difficulty in reaching a table. He also had difficulty fitting
 14 under the table a sufficient distance to eat comfortably rather than having to eat
 15 his food at an uncomfortable distance from the table because the table was not
 16 designed and configured for use by disabled wheelchair users.

17 11. After eating, plaintiff had need to use the restroom. He had great
 18 difficulty entering the (men's) restroom due to the excessive weight of the
 19 restroom door and it's poor design and configuration, requiring plaintiff to
 20 request assistance from another Restaurant patron, a stranger, to hold the door
 21 open for plaintiff to enter, again causing him embarrassment. Once inside the
 22 restroom, plaintiff saw that he could not use either of the two toilet stalls due to
 23 their inaccessible configuration, and was forced to limit his restroom use to a
 24 urinal. In frustration and physical discomfort from his continuing need to use a
 25 restroom, plaintiff left the Restaurant to seek an accessible restroom elsewhere.
 26 Each of the barriers encountered caused plaintiff to suffer difficulty, discomfort
 27 and embarrassment, all to his physical, mental and emotional damages.

28 12. On December 12, 2012, plaintiff and his wife returned to the

1 Benihana with their two sons for lunch because it was the birthday of one of his
 2 son's and Benihana was his son's favorite restaurant. Plaintiff was again using
 3 his wheelchair and again was unable to open either of the two sets of entrance
 4 doors without assistance. Again he had trouble with the paths of travel between
 5 the tables, and maneuvering between the tables and forcing other patrons to leave
 6 their seats in order to allow him to pass by in his wheelchair, causing him
 7 unwanted attention and embarrassment. None of the tables appeared wheelchair
 8 accessible, and even when he found seating at the "corner" of one of the tables, to
 9 allow him to approach the table, he found that the table's configuration - with
 10 inadequate "knee space" and space for his footrests - forced him to sit too far
 11 from the table to comfortably reach his food.

12 13. After the family had lunch, and after paying the bill, plaintiff had
 13 need to use the men's restroom, but again needed assistance to enter due to the
 14 excessive weight of the door and improper configuration of the restroom, with
 15 another person having to hold the door open for him. Inside the restroom there
 16 was a toilet stall which apparently was intended to be the "disabled accessible"
 17 stall. However, the stall was improperly configured, with the stall door opening
 18 into the stall space. This left no room for a wheelchair to fit inside and allow the
 19 wheelchair user to close the stall door for privacy; nor was there room inside the
 20 stall to approach or use the toilet, particularly because the stall door opened in
 21 instead of out. Plaintiff also could not close the door to achieve any privacy.
 22 Because of the improper configuration of the restroom, use of the sink for
 23 handwashing was also difficult as plaintiff's wheelchair blocked other persons
 24 from entering the restroom and caused the restroom entry door to strike plaintiff
 25 in his wheelchair. The narrow exit door from the restroom caused plaintiff to
 26 scrape his knuckles while using his hands to propel his wheelchair.

27 14. On or about January 23, 2013, plaintiff made one more attempt to
 28 patronize this Benihana restaurant with his wife and sons, this time using crutches

1 instead of his wheelchair. He again faced difficulty on entering and exiting the
 2 Restaurant and still required other persons' assistance with the two excessively
 3 heavy sets of double doors, and had other problems similar to those he
 4 experienced on his prior visits. Plaintiff again complained about the access
 5 problems to the hostess at the reception desk, and was again assured that she
 6 would bring these problems to the attention of management. However, on
 7 information and belief, none of the subject access barriers were subsequently
 8 removed, as confirmed by a visit and informal investigation of the Restaurant by
 9 plaintiff's CASp certified access consultant prior to the filing of this lawsuit.

10 15. As a result of the described access barriers, plaintiff suffered
 11 physical, mental and emotional damages, including difficulty, discomfort and
 12 embarrassment, as he had on his previous two visits. Again, his complaints to the
 13 hostess and apparent management personnel brought apologies, but apparently no
 14 action to rectify the access problems. Plaintiff has brought this lawsuit in an
 15 effort to require that the owners and operators of the subject restaurant and
 16 property provide facilities accessible to and usable by plaintiff and other mobility
 17 disabled persons.

18 16. On information and belief, before filing this lawsuit, plaintiff's legal
 19 representatives had a CASp-certified access consultant with more than 25 years
 20 experience do an informal investigation of the premises. While he could not
 21 make detailed measurements, he determined that the Restaurant appeared to be
 22 inaccessible to mobility disabled persons, such as plaintiff, in multiple ways,
 23 including but not limited to the following: the lack of the required number of
 24 properly configured parking spaces; the Restaurant's entrance door lacked a level
 25 landing, lacked proper hardware, was excessively heavy, and had insufficient
 26 strike edge clearance; the entryway path of travel was not smooth and level,
 27 making the route bumpy and uncomfortable for use by wheelchair users; the
 28 interior paths of travel were not sufficiently wide; there was insufficient knee

1 space for wheelchair use at all of the tables, and insufficient space for a
 2 wheelchair user to sit anywhere without blocking the aisleways; the men's
 3 restroom was inaccessible in multiple ways, including the lack of lever-type
 4 hardware on the restroom door, lack of sufficient strike edge clearance on the
 5 outside of the door, insufficient clear opening width of the doorway, lack of
 6 sufficient landing space on the inside of the door, insufficient turning radius
 7 inside the restroom, improper locking mechanism on the stall door for disabled
 8 use, improperly sized and located toilet, insufficient clear floor space beside the
 9 toilet, toilet grab bars of insufficient length, improperly located toilet paper
 10 dispenser, sink counter of improper height and lacking sufficient clear floor space
 11 in front of the sink, no knee space below the sink (which is enclosed in a cabinet),
 12 improper hardware on the sink, and improper location and mounting of the
 13 sanitary seat cover dispenser; all rendering these premises inaccessible to and
 14 unusable by physically disabled persons. All of these items should be corrected
 15 as part of the injunctive relief request of plaintiff's lawsuit. All facilities must be
 16 brought into compliance with all applicable federal and state code requirements.
 17 Further, plaintiff reserves the right to seek leave to amend this Complaint after
 18 inspection of the Restaurant premises by his access consultants during this
 19 litigation, pursuant to the 9th Circuit's holding in *Doran v. 7-Eleven, Inc.*, 524
 20 F.3d 1034 (9th Cir. 2008).

21 17. Further, each and every violation of the Americans With Disabilities
 22 Act of 1990 (as pled in the Second Cause of Action, *infra*, the contents of which
 23 are replied and incorporated herein, word for word, as if separately replied), also
 24 constitutes a separate and distinct violation of California Civil Code § 54(c), thus
 25 independently justifying an award of damages and injunctive relief pursuant to
 26 California law, including but not limited to Civil Code §§ 54.3 and Business &
 27 Professions Code §§ 17200 *et seq.*

28 18. Further, each and every violation of the Americans With Disabilities

1 Act of 1990 (as pled in the Second Cause of Action hereinbelow, the contents of
 2 which are replied and incorporated herein, word for word, as if separately replied),
 3 also constitutes a separate and distinct violation of Civil Code § 54.1(d), thus
 4 independently justifying an award of damages and injunctive relief pursuant to
 5 California law, including but not limited to Civil Code § 54.3 and Business &
 6 Professions Code §§ 17200 *et seq.*

7 **19. INJUNCTIVE RELIEF:** Plaintiff seeks injunctive relief to prohibit
 8 the acts and omissions of defendants as complained of herein which are
 9 continuing on a day-to-day basis and which have the effect of wrongfully
 10 excluding plaintiff and other members of the public who are physically disabled,
 11 including but not limited to wheelchair users, from full and equal access to these
 12 public facilities. Such acts and omissions are the cause of humiliation and mental
 13 and emotional suffering of plaintiff in that these actions continue to treat plaintiff
 14 as an inferior and second class citizen and serve to discriminate against him on
 15 the sole basis that he is a person with disabilities who requires disabled accessible
 16 facilities in order to enjoy the premises on a full and equal basis. Plaintiff is
 17 deterred by knowledge of the inaccessibility of the premises from returning to use
 18 these facilities and is unable, so long as such acts and omissions of defendants
 19 continue, to achieve equal access to and use of these public facilities. Plaintiff
 20 therefore is deterred from returning to use the subject premises and its facilities
 21 until these facilities are made properly accessible for disabled persons. Plaintiff
 22 alleges that he intends to so return once legally required access has been
 23 provided. The acts of defendants have proximately caused and will continue to
 24 cause irreparable injury to plaintiff if not enjoined by this Court. Plaintiff seeks
 25 injunctive relief as to all areas of the premises that he has personally encountered.
 26 Further, as to all areas identified before or during this litigation by plaintiff's
 27 access consultant, that he or other physically disabled persons may encounter in
 28 the future (under the 9th Circuit's holding in *Doran v. 7-Eleven, Inc.* 524 F.3d

1 1034 (9th Cir. 2008)) plaintiff prays leave to amend this complaint to obtain
 2 injunctive relief. As to those of the defendants that currently own, operate, and/or
 3 lease (from or to) the subject premises, plaintiff seeks preliminary and permanent
 4 injunctive relief to enjoin and eliminate the discriminatory practices and barriers
 5 that deny full and equal access for disabled persons; to require maintenance of all
 6 accessible features once they are provided; and for reasonable statutory attorney
 7 fees, litigation expenses and costs.

8 20. Wherefore plaintiff asks this Court to preliminarily and permanently
 9 enjoin any continuing refusal by defendants to grant full and equal access to
 10 plaintiff in the respects complained of and to require defendants to comply
 11 forthwith with the applicable statutory requirements relating to access for disabled
 12 persons. Such injunctive relief is provided by California Business & Professions
 13 Code §§ 17200 *et seq.*, and other law. Plaintiff further requests that the Court
 14 award damages pursuant to Civil Code § 54.3 and other law and attorney fees,
 15 litigation expenses, and costs pursuant to Civil Code § 54.3, Business &
 16 Professions Code §§ 17200 *et seq.*, Code of Civil Procedure § 1021.5, and other
 17 law, all as hereinafter prayed for.

18 21. **DAMAGES:** As a result of the denial of equal access to the subject
 19 facilities, and due to the acts and omissions of defendants and each of them in
 20 owning, operating, leasing, constructing, altering, and maintaining the subject
 21 facilities, plaintiff suffered a violation of his civil rights, including but not limited
 22 to rights under Civil Code §§ 54 and 54.1, all to his damages per Civil Code
 23 § 54.3, including damages for physical, mental and emotional injuries, statutory
 24 damages, and statutory treble damages, as hereinafter stated.

25 22. **TREBLE DAMAGES:** At all times herein mentioned, defendants
 26 knew, or in the exercise of reasonable diligence should have known, that their
 27 barriers and practices at their subject facilities violated disabled access
 28 requirements and standards, and had a discriminatory affect upon plaintiff and

1 upon other physically disabled persons, but defendants have failed and refused to
2 rectify the violations, and presently continue a course of conduct in maintaining
3 architectural barriers that discriminate against plaintiff and similarly situated
4 disabled persons. On information and belief, an award of treble damage pursuant
5 to California Civil Code § 54.3 would be appropriate.

6 **23. FEES AND COSTS:** As a result of defendants' acts, omissions, and
7 conduct, plaintiff has been required to incur attorney fees, litigation expenses, and
8 costs in order to enforce plaintiff's rights and to enforce provisions of the law
9 protecting access for disabled persons and prohibiting discrimination against
10 disabled persons. Plaintiff therefore seeks recovery of all reasonable attorney
11 fees, litigation expenses, and costs, pursuant to the provisions of Civil Code
12 § 54.3. Additionally, plaintiff's lawsuit is intended to require that defendants
13 make their facilities accessible to all disabled members of the public, justifying
14 "public interest" attorney fees, litigation expenses and costs pursuant to the
15 provisions of California Code of Civil Procedure § 1021.5 and other applicable
16 law.

17 WHEREFORE, plaintiff prays for damages and injunctive relief as
18 hereinafter stated.

**SECOND CAUSE OF ACTION:
VIOLATION OF CALIFORNIA LAW INCLUDING: THE UNRUH ACT,
CIVIL CODE SECTIONS 51 AND 52, AND THE AMERICANS WITH
DISABILITIES ACT AS INCORPORATED
BY CIVIL CODE SECTION 51(f)**

23 24. Plaintiff repleads and incorporates by reference, as if fully set forth
24 hereafter, the factual allegations contained in Paragraphs 1 through 23 of this
25 Complaint and incorporates them herein.

26 25. At all times relevant to this complaint, California Civil Code § 51
27 has provided that physically disabled persons are free and equal citizens of the
28 state, regardless of disability or medical condition:

1 All persons within the jurisdiction of this state are free and equal,
 2 and no matter what their sex, race, color, religion, ancestry, national
 3 origin, disability, or medical condition are entitled to the full and
 4 equal accommodations, advantages, facilities, privileges, or services
 5 in all business establishments of every kind whatsoever.
 6 Cal. Civ. C. § 51(b).

7 26. California Civil Code § 52 provides that the discrimination by
 8 defendants against plaintiff on the basis of his disabilities constitutes a violation
 9 of the anti-discrimination provisions of §§ 51 and 52.

10 27. Defendants' discrimination constitutes a separate and distinct
 11 violation of California Civil Code § 52, which provides that:

12 Whoever denies, aids or incites a denial, or makes any discrimination
 13 or distinction contrary to section 51, 51.5, or 51.6 is liable for each
 14 and every offense for the actual damages, and any amount that may
 15 be determined by a jury, or a court sitting without a jury, up to a
 16 maximum of three times the amount of actual damage but in no case
 17 less than four thousand dollars (\$4,000), and any attorney's fees that
 18 may be determined by the court in addition thereto, suffered by any
 19 person denied the rights provided in Section 51, 51.5, or 51.6.

20 28. Any violation of the Americans With Disabilities Act of 1990 (as
 21 pled in the Third Cause of Action) constitutes a violation of California Civil Code
 22 § 51(f) thus independently justifying an award of damages and injunctive relief
 23 pursuant to California law. Per § 51(f), "A violation of the right of any individual
 24 under the Americans With Disabilities Act of 1990 (Public Law 101-336) shall
 25 also constitute a violation of this section."

26 29. The actions and omissions of defendants as herein alleged constitute
 27 a denial of access to and use of the described public facilities by physically
 28 disabled persons within the meaning of California Civil Code §§ 51 and 52. As a
 proximate result of defendants' action and omissions, defendants have
 discriminated against plaintiffs in violation of Civil Code §§ 51 and 52.

30. **FEES AND COSTS:** As a result of defendants' acts, omissions and
 conduct, plaintiff has been required to incur attorney fees, litigation expenses and
 costs as provided by statute in order to enforce plaintiff's rights and to enforce

provisions of the law protecting access for disabled persons and prohibiting discrimination against disabled persons. Plaintiff therefore seeks recovery of all reasonable attorney fees, litigation expenses and costs pursuant to the provisions of California Civil Code §§ 51 and 52. Additionally, plaintiff's lawsuit is intended to require that defendants make their facilities and policies accessible to all physically disabled members of the public, justifying "public interest" attorney fees, litigation expenses and costs pursuant to the provisions of California Code of Civil Procedure § 1021.5 and other applicable law.

Wherefore, plaintiff prays the Court grant relief as requested hereinbelow.

**THIRD CAUSE OF ACTION:
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990
42 USC §§ 12101 *et seq.***

31. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in Paragraphs 1 through 30 of this Complaint, and incorporates them herein as if separately replied.

32. In 1990 the United States Congress made findings that laws were needed to more fully protect "some 43,000,000 Americans [with] one or more physical or mental disabilities;" that "historically, society has tended to isolate and segregate individuals with disabilities;" that "such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;" that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals;" and that "the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous..." 42 USC §12101.

33. In passing the Americans with Disabilities Act of 1990 (hereinafter "ADA"), Congress stated as its purpose:

1 It is the purpose of this Act

- 2 (1) to provide a clear and comprehensive national mandate for the
 3 elimination of discrimination against individuals with disabilities;
- 4 (2) to provide clear, strong, consistent, enforceable standards addressing
 5 discrimination against individuals with disabilities;
- 6 (3) to ensure that the Federal Government plays a central role in enforcing
 7 the standards established in this Act on behalf of individuals with
 8 disabilities; and
- 9 (4) to invoke the sweep of congressional authority, including the power to
 10 enforce the fourteenth amendment and to regulate commerce, in order to
 11 address the major areas of discrimination faced day-to-day by people with
 12 disabilities. (Emphasis added)

13 42 USC § 12101(b).

14 34. As part of the ADA, Congress passed “Title III - Public
 15 Accommodations and Services Operated by Private Entities.” 42 USC § 12181 *et seq.* The subject property and facility is one of the “private entities” which are
 16 considered “public accommodations” for purposes of this title, which includes
 17 any “restaurant, bar, or other sales or rental establishment serving food or drink.”
 18 § 301(7)(B).

19 35. The ADA states that “No individual shall be discriminated against on
 20 the basis of disability in the full and equal enjoyment of the goods, services,
 21 facilities, privileges, advantages, or accommodations of any place of public
 22 accommodation by any person who owns, leases, or leases to, or operates a place
 23 of public accommodation.” 42 USC § 12182. The specific prohibitions against
 24 discrimination included, but were not limited to the following:

25 § 302(b)(1)(A)(ii): “Participation in Unequal Benefit. - It shall be discriminatory
 26 to afford an individual or class of individuals, on the basis of a disability or
 27 disabilities of such individual or class, directly, or through contractual, licensing,
 28 or other arrangements, with the opportunity to participate in or benefit from a
 good, service, facility, privilege, advantage, or accommodation that is not equal to
 that afforded to other individuals.”

1 § 302(b)(2)(A)(ii): “a failure to make reasonable modifications in policies,
 2 practices, or procedures when such modifications are necessary to afford such
 3 goods, services, facilities, privileges, advantages, or accommodations to
 4 individuals with disabilities...;”
 5 § 302(b)(2)(A)(iii): “a failure to take such steps as may be necessary to ensure
 6 that no individual with a disability is excluded, denied service, segregated, or
 7 otherwise treated differently than other individuals because of the absence of
 8 auxiliary aids and services...;”
 9 § 302(b)(2)(A)(iv): “a failure to remove architectural barriers, and communication
 10 barriers that are structural in nature, in existing facilities... where such removal is
 11 readily achievable;”
 12 § 302(b)(2)(A)(v): “where an entity can demonstrate that the removal of a barrier
 13 under clause (iv) is not readily achievable, a failure to make such goods, services,
 14 facilities, privileges, advantages, or accommodations available through alternative
 15 methods if such methods are readily achievable.”

16 The acts and omissions of defendants set forth herein were in violation of
 17 plaintiff’s rights under the ADA and the regulations promulgated thereunder, 28
 18 CFR Part 36 *et seq.*

19 36. On information and belief, the removal of each of the barriers
 20 complained of by plaintiff as hereinabove alleged, were at all times herein
 21 mentioned “readily achievable” under the standards §§ 301 and 302 of the ADA,
 22 including comparing the cost of removal of each barrier to access against the
 23 overall financial resources of all owners, operators, lessors and lessees of the
 24 property, and assessing the standards of §§ 301 and 302 of the ADA, as
 25 interpreted by Department of Justice regulations and 9th Circuit case law
 26 standards. As noted hereinabove, removal of each and every one of the
 27 architectural barriers complained of herein were also required under California
 28 law. Further, on information and belief, alterations, structural repairs or additions

1 since January 26, 1993 have also independently triggered requirements for
 2 removal of barriers to access for disabled persons per § 303 of the ADA. In the
 3 event that removal of any barrier is found to be "not readily achievable,"
 4 defendants still violated the ADA, per § 302(b)(2)(A)(v) by failing to provide all
 5 goods, services, privileges, advantages and accommodations through alternative
 6 methods that were readily achievable.

7 37. On information and belief, as of the date of plaintiff's encounter at
 8 the subject premises and as of the filing of this Complaint, the premises have
 9 denied and continue to deny full and equal access to plaintiff and to other
 10 disabled persons, including wheelchair users, in other respects, which violate
 11 plaintiff's rights to full and equal access and which discriminate against plaintiff
 12 on the basis of his disability, thus wrongfully denying to plaintiff the full and
 13 equal enjoyment of the goods, services, facilities, privileges, advantages and
 14 accommodations, in violation of §§ 301, 302 and 303 of the ADA. 42 USC
 15 §§ 12181, 12182 and 12183.

16 38. On information and belief, defendants have continued to violate the
 17 law and deny the rights of plaintiff and other disabled persons to access this
 18 public accommodation since on or before plaintiff's encounters. Pursuant to the
 19 ADA, § 308, 42 USC 12188 *et seq.*, plaintiff is entitled to the remedies and
 20 procedures set forth in § 204(a) of the Civil Rights Act of 1964, 42 USC 2000(a)-
 21 3(a), as plaintiff is being subjected to discrimination on the basis of disability in
 22 violation of the ADA or has reasonable grounds for believing that he is about to
 23 be subjected to discrimination. Pursuant to § 308(a)(2), "In cases of violations of
 24 § 302(b)(2)(A)(iv) and § 303(a). . . , injunctive relief shall include an order to alter
 25 facilities to make such facilities readily accessible to and usable by individuals
 26 with disabilities to the extent required by this title."

27 39. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the
 28 Civil Rights Act of 1964, 42 USC 2000(a)-3(a), and pursuant to Federal

1 Regulations adopted to implement the Americans with Disabilities Act of 1990.
2 Plaintiff is a qualified disabled person for purposes of § 308(a) of the ADA who
3 is being subjected to discrimination on the basis of disability in violation of Title
4 III and who has reasonable grounds for believing he will be subjected to such
5 discrimination each time that he may attempt to use the property and premises.

6 WHEREFORE, plaintiff prays for damages and injunctive relief as
7 hereinafter stated.

**FOURTH CAUSE OF ACTION:
VIOLATION OF UNFAIR COMPETITION ACT
(California Business and Professions Code sections 17200 *et seq.*)**

11 40. Plaintiff repleads and incorporates by reference, as if fully set forth
12 again herein, the allegations contained in Paragraphs 1 through 39 of this
13 Complaint, and incorporates them herein as if separately replied

14 41. On information and belief, defendants BENIHANA, INC.;
15 BENIHANA NATIONAL CORPORATION; EQUITY ONE, INC.; and
16 ANGELO, GORDON & CO., L.P. are each a for-profit corporation organized
17 under California law.

18 42. On information and belief, defendants, and each of them, have
19 engaged and are engaged in unfair competition, unfair or fraudulent business
20 practices and unfair, deceptive, untrue or misleading advertising in violation of
21 the Unfair Competition Act. Bus. & Prof. C. §§ 17200 *et seq.*

22 43. On information and belief, defendants, and each of them, engage in
23 business practices and policies that create systemic barriers to equal access for
24 people with mobility disabilities. Their practice is to create and maintain a public
25 accommodation that contains physical barriers to access in violation of state and
26 federal law, to create and maintain policies that blame the disabled person for
27 his/her inability to achieve equal access, and to offer humiliating false alternatives
28 such as the requirement that disabled persons must request assistance from others,

1 including strangers, in entering the Restaurant, entering and using the restroom,
 2 and finding a usable path of travel to reach usable seating, including requiring
 3 other patrons to move from their seats in order to allow passage to and from
 4 dining seating locations at tables.

5 44. On information and belief, defendants, and each of them, are in
 6 violation of the Americans with Disabilities Act, California Civil Code sections
 7 51, 52, 54, and 54.1, California Government Code sections 4450 *et seq.*, and
 8 California Health and Safety Code sections 19955 *et seq.*, as well as regulations
 9 under California Building Code Title 24 and the American with Disabilities Act
 10 Standards (ADAAG regulations). State and federal statutory schemes are
 11 intended to provide people with disabilities full and equal access to places of
 12 public accommodation and businesses, including restaurants. “Full and equal”
 13 disabled access has been identified in state and federal decisions as a public
 14 policy of the highest order under California law and under the ADA.

15 45. Violations of these access statutes were and are unlawful. Violations
 16 of these statutes also violate established concepts of fairness, are immoral,
 17 unethical, oppressive and unscrupulous.

18 46. On information and belief, the unfair business practices and policies
 19 were also fraudulent: the Benihana restaurant and its owners and operators holds
 20 itself out as a place of public accommodation, welcome to all and code-compliant.
 21 It is a very popular restaurant, drawing consumers from all over the area. It is
 22 likely to deceive consumers who are disabled into believing it offers full and
 23 equal access, particularly because the laws requiring access have been in effect
 24 for more than 40 years in California and more than 20 years under federal law,
 25 including the Americans with Disabilities Act of 1990, its ADAAG regulations
 26 and Department of Justice regulations.

27 47. The unfair business practices and policies were unfair and injurious
 28 to plaintiff, a consumer of the Benihana’s goods and services. He suffered injury

1 in fact and has lost money or property as a result of defendants' unfair business
 2 practices and policies. He took time and effort and spent money to travel to and
 3 utilize the goods and services of the Restaurant, on the belief that the Restaurant
 4 would be accessible and that he, as a disabled person, would be given full and
 5 equal access. He was given less access to the goods and services of the
 6 Restaurant than other consumers, although he paid the same price for them as
 7 other consumers pay, e.g., he could not use the restroom that is offered to all
 8 customers, he could not travel with ease through the Restaurant, he could not sit
 9 with ease at the table, and he had to draw unwanted attention to himself in order
 10 to obtain the assistance of others, all to his difficulty, discomfort and
 11 embarrassment. His enjoyment of the Restaurant's goods and services was
 12 reduced further when he complained about the lack of proper access because he
 13 was required to spend time trying to obtain access that would otherwise have been
 14 unnecessary had defendants not engaged in their unfair practices and policies. He
 15 has been forced to expend time and energy to try to remediate the inequality and
 16 receive equal goods and services as defendants provide to other consumers.

17 48. Plaintiff seeks relief in the form of such orders, including an
 injunction or court-enforceable consent decree, as may be necessary to prevent the
 18 continued use of defendants' unfair business practices and policies, and seeks
 19 restitution to restore to him any money that defendants acquired by means of such
 20 unfair competition, including profits unfairly obtained to the extent that these
 21 profits represent monies given to the defendants by plaintiff.

22 49. Because enforcement of the panoply of equal access laws for people
 23 with disabilities is a public policy of the highest order, plaintiff seeks
 24 compensation for his attorney fees, litigation cost and expenses expended in the
 25 public interest in bringing this lawsuit. California Code of Civil Procedure
 26 § 1021.5.

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PRAAYER

Plaintiff prays that this Court:

3 1. Issue a preliminary and permanent injunction directing defendants as
4 current owners, operators, lessors, and/or lessees of the property and premises to
5 modify the above described property and premises and related facilities so that
6 each provides full and equal access to all persons, including but not limited to
7 persons with physical disabilities who use wheelchairs, and issue a preliminary
8 and permanent injunction directing defendants to provide and maintain facilities
9 usable by plaintiff and similarly situated persons with disabilities, and which
10 provide full and equal access, as required by law, including appropriate changes
11 in policy;

12 2. Retain jurisdiction over the defendants until such time as the Court is
13 satisfied that defendants' unlawful policies, practices, acts and omissions, and
14 maintenance of inaccessible public facilities as complained of herein no longer
15 occur, and can not recur;

16 3. Award to plaintiff all appropriate damages, including but not limited
17 to statutory damages, general damages and treble damages in amounts within the
18 jurisdiction of this Court, all according to proof;

19 4. Award to plaintiff all reasonable restitution for defendants' unfair
20 competitive practices;

21 5 Award to plaintiff all reasonable statutory attorney fees, litigation
22 expenses, and costs of this proceeding as provided by state and federal law;

23 6. Award to plaintiff prejudgment interest pursuant to California Civil
24 Code § 3291;

25 7. Grant such other and further relief as this Court may deem just and
26 proper.

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28 //

1 Dated: May 10, 2013

LAW OFFICES OF PAUL L. REIN

Paul L Rein

By PAUL L. REIN
Attorneys for Plaintiff
AL DE LA CAMPA

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a jury for all claims for which a jury is permitted.

10 Dated: May 10, 2013

LAW OFFICES OF PAUL L. REIN

Paul L Rein

By PAUL L. REIN
Attorneys for Plaintiff
AL DE LA CAMPA

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1 **VERIFICATION OF COMPLAINT**

2 (Pursuant to California Code of Civil Procedure § 425.50)

- 3
- 4 1. I am the above-named plaintiff and am suing herein as an individual.
- 5 2. I have read the attached Verified Complaint for Injunctive Relief and
- 6 Damages. I am familiar with the facts alleged therein, and hereby verify
- 7 that the factual allegations contained in the aforementioned Verified
- 8 Complaint are true and correct to the best of my information, understanding
- 9 and belief.

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11 I verify the above statement under penalty of perjury, and under the

12 law of the State of California, in the City of Oakland, California.

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14 Dated: May 10, 2013

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Plaintiff AL DE LA CAMPA

